



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0968; FRL-9916-47-Region 5]

Approval and Promulgation of Air Quality Implementation Plans;

Indiana; Open Burning Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a November 14, 2011, request by Indiana to revise the state implementation plan (SIP) to incorporate the open burning provisions in Title 326 of the Indiana Administrative Code (IAC), Article 4, Rule 1 (326 IAC 4-1), Open Burning Rule. EPA is approving this rule for attainment counties and is taking no action on the rule for Clark, Floyd, Lake and Porter counties which are nonattainment or maintenance areas for ozone (O₃) or particulate matter (PM).

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the

rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2011-0968, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. Email: blakley.pamela@epa.gov
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2011-0968. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov,

including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, (312) 886-6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886-6031, hatten.charles@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. Discussion of State submittal.
- III. What action is EPA taking today?
- IV. Statutory and Executive Order Reviews.

I. What is the background for this action?

Open burning is generally prohibited in the state of Indiana. Indiana state law exempts certain open burning activities under conditions that minimize the impact on the air quality and public health. Open burning activities allowed include: maintenance burning, recreational or ceremonial fires, farm burning, waste oil burning, prescribed used to facilitate the growth of desired vegetation, and residential burning.

Indiana's open burning rule at 326 IAC 4-1 [formerly Air Pollution Code - 2, (APC-2)] applies state-wide and was first approved on June 22, 1978 (43 FR 26722), and re-codified on July 16, 1982 (47 FR 30972). On February 1, 1996 (61 FR 3581), EPA approved a ban on residential open burning for Clark, Floyd, Lake and Porter counties to reduce VOC emissions as part of Indiana's fifteen (15) percent rate of progress plan for the 1-hour O₃ standard. This ban on residential open burning remains a permanent and enforceable control measure in the state's O₃ SIP.

On November 14, 2011, the Indiana Department of Environmental Management (IDEM) submitted a request to EPA to revise 326 IAC 4-1. IDEM published several newspaper notices (March 31, 2011, June 25, 2011) informing the public of the revisions to 326 IAC 4-1-3 and 326 IAC 4-1-4. IDEM held a public hearing on these revisions on August 3, 2011. There were

no comments received. IDEM's November 14, 2011, submittal also included certification that adoption of the revisions at 326 IAC 4-1-0.5, 326 IAC 4-1-1, 326 IAC 4-1-2, 326 IAC 4-1-3, 326 IAC 4-1-4, 326 IAC 4-1-4.1, 326 IAC 4-1-4.2, and 326 IAC 4-1-4.3, had been preceded by adequate notice and public hearing.

II. Discussion of State submittal.

Below is a discussion of Indiana's rule, including an identification of any significant changes from the previously approved SIP.

- 4-1-0.5 - Definitions

This section defines several terms, including a revised definition of "open burn." IDEM consolidated the definition of the terms from 326 IAC 4-1, "open burning" and "open" into one definition at 326 IAC 4-1-0.5(6), "open burn." The term "open burn" means, the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber. This revision provides clarity to the definition of "open burn" and is approvable into the Indiana SIP.

- 4-1-1 Scope

This section describes the rule's applicability. The applicability remains consistent with the existing SIP and continues to apply to all open burning state-wide.

Because the revisions to this section are administrative and non-substantive, EPA finds 326 IAC 4-1-1 remains consistent with the approved SIP, and therefore, are approvable into Indiana's SIP.

- 4-1-2 - Prohibition against open burning

This section prohibits open burning of any material not exempt, or authorized, unless approval has been granted by the Commissioner or the Commissioner's designated agent. There were no substantive changes to this section of the rule. The revision reflects a wording change. The language in the SIP reads, "No person shall open burn any material except as provided in section 3 or 4." Indiana's revised the language now reads, "Open burning is prohibited except as allowed in this rule."

The revision to this section requires a person or entity subject this rule to comply with the entire rule and not just certain sections. Thus, EPA finds the revision to the rule to be consistent with the approved SIP and is approvable into Indiana's SIP.

- 4-1-3 Exemptions

In the approved SIP, section 3 of 326 IAC 4-1 identifies those exemptions for certain open burning activities under conditions that minimize the impact on air quality and public health.

In section (3)(a)(1) Indiana identifies exemptions in the rule for open burning for maintenance purposes. This exemption allows open burning of the following:

1) vegetation from farms, cemeteries, drainage ditches and agricultural land, if the burn occurs in an unincorporated area; 2) wood products from pruning or clearing a roadside by a county highway department and the initial clearing of a public utility right-of-way if in an unincorporated area; 3) undesirable wood structures or remnants; and 4) clean petroleum products for maintaining or for repairing railroad tracks, but not including railroad ties. Section (3)(a)(2) applies certain restrictions to open burning, for maintenance purposes, that is allowed by this rule. These include: extinguishing the fire if it creates a nuisance or a fire hazard; all fires must be attended at all times during burning until completely extinguished; no burning during unfavorable meteorological conditions; removal of all asbestos-containing material before burning of a

structure. The language in this section (3)(a) remains consistent with the existing SIP.

Section (3)(b) specifies certain conditions that apply to any fires allowed by this rule in section (3)(c). The language in this section (3)(b) remains consistent with the existing SIP.

Section (3)(c), allows the following types of fires: recreational and ceremonial fires; private residential burning; and waste oil burning. IDEM added criteria that would allow the burning of two single family, non-demolished dwellings per calendar year by municipal fire departments for the purposes of live fire training subject to certain conditions, including written notification to IDEM and the removal of material that would otherwise result in toxic air emissions; and the ceremonial burning of United States flags. These additional exemptions are subject to both the conditions in section (3)(b) and more specific conditions associated with each exemption to limit open burning emissions.

The revisions to section 3 of 326 IAC are not anticipated to increase the amount or frequency of open burning occurring in Indiana, and therefore, are approvable into the Indiana SIP.

- 4-1-4 Emergency burning

IDEM revised section 4 renaming it "Emergency burning". The SIP approved language in section 4 of 326 IAC 4-1 identified certain types of open burning not exempt by the rule that would require a person(s) to obtain prior approval before open burning by the Air Pollution Control Board (APCB) or its designated agent. Among the list of open burnings that IDEM would consider granting approval included emergency burnings. The revisions address the administrative function associated with open burning approvals in the event of an emergency. IDEM revised the rule for emergency burning to require written approval by the Commissioner. Emergency burnings may be authorized for spilled petroleum products and clean wood waste, vegetation or deceased animals under certain conditions.

This revision serves to help clarify language in the rule regarding the approval process for emergency burning. Thus, EPA finds the revision to the rule to be consistent with the approved SIP when open burning for emergency purposes, and is approvable into the Indiana SIP.

- 4-1-4.1 to 4-1-4.3 - Open Burning Approval Process

The open burning "approval process" is contained in sections 4-1-4.1 thru 4-1-4.3. The approval process is

designed to simplify the relevant steps for a person(s) or an entity to submit a request to open burn or obtain a variance from the Commissioner or the Commissioner's designated agent, similar to requests for approvals for emergency burning, as noted above in section 4.

Below is a discussion of the various parts of Indiana's open burning approval process.

4-1-4.1 Open burning approval; criteria and conditions

Section 4.1(a) - Burning not exempted by Section 3 or 4 of this rule may be authorized by the issuance of an approval by the Commissioner or the Commissioner's designated agent, after consideration of an approval application, for fire training, burning of natural growth derived from a clearing operation and burning of highly explosive or dangerous materials for which no alternative disposal method exists, burning of clean wood products and natural growth.

Section 4.1(b) specifies the criteria that may be considered for approval for open burning, including: a demonstration that alternative methods of disposal are impractical; there are not more than five residences within 500 feet of the proposed burning site; there have been no open burning violations at the site of

the proposed burning or the applicant; the burning site is located in a county not designated as a nonattainment area for PM₁₀ (particles that are 10 micrometers in diameter or smaller) or O₃ and is not located in Clark or Floyd County.

Section 4.1(c) prohibits approval of residential burning in Clark, Floyd, Lake or Porter County.

Section 4.1(d) provides the conditions that any approval for open burning may be subject to, including: only clean wood products shall be burned; no asbestos-containing material shall be burned; no burning shall be conducted during unfavorable meteorological conditions; and burning shall be conducted during daylight hours only.

Section 4.1(e) specifies that an approval letter for open burning shall be valid for no longer than one year from the date of issuance. However, an approval letter for open burning may be valid for as long as five years, if the approval application is accompanied by an open burning plan which must contain a description of the open burning proposed.

Section 4.1(f), states that the Commissioner may add conditions to an approval letter, as necessary, to prevent

a public nuisance or to protect public health. Such conditions may be based on local air quality conditions, including whether the area is a nonattainment county as defined in 326 IAC 1-4-1 or has been redesignated from nonattainment to attainment status.

4-1-4.2 Open burning; approval revocation

As a part of the approval process, this section allows the Commissioner to revoke an approval letter for open burning if the applicant violates any requirement of Section 4.1(d) or 4.1(f) or falsifies any information on an application for an approval.

4-1-4.3 Open burning approval; delegation of authority

This section of the rule states that the Commissioner may delegate the authority to issue approval letters for open burning to another agency that has the necessary legal authority to implement an approval program.

EPA finds the "approval process" outlined in 326 IAC 4-1-4.1 to 326 IAC 4-1-4.3 to be consistent with the approved SIP. The revisions to the rule does not relax IDEM's review process, provides clarity, as well as simplifies the administrative

procedures necessary to obtain approval or a variance to open burn.

EPA finds Indiana's open burning rule provides a state-wide prohibition of open burning with reasonable exceptions. Open burning not specifically exempt may be authorized by the Commissioner for specific purposes, e.g., fire training or burning of highly explosive materials, and based upon specified criteria, e.g. alternative methods of disposal are not feasible and there are not more than five residences within 500 feet of the proposed burning site. EPA will recognize approvals for burning not specifically exempted by these regulations authorized by the Commissioner or the Commissioner's designated agent provided that a copy of the approval letter and application be kept on file and made available to EPA upon request.

The revisions to 326 IAC 4-1 range from wording changes and additions, improve and expand the applicability of the rule and its impact on air quality statewide. EPA is approving this rule for attainment counties and is taking no action on the rule for Clark, Floyd, Lake and Porter counties which are nonattainment or maintenance areas for O₃ or PM. On balance, EPA finds that the rule strengthens the existing SIP in Indiana and as such, deems the submittal approvable.

III. What action is EPA taking today?

EPA is approving a November 14, 2011, request by Indiana to revise the SIP to update 326 IAC 4-1, Open Burning Rule, because reducing open burning will reduce PM, volatile organic compounds, and other pollutants. EPA is approving this rule for attainment counties and is taking no action on the rule for Clark, Floyd, Lake and Porter counties which are nonattainment or maintenance areas for O₃ or PM. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties

interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major

rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Emissions Reporting, Incorporation by reference, Ozone, Volatile
organic compounds.

Dated: September 2, 2014.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770, the table in paragraph (c) is amended by revising the entries under the subheading entitled "Article 4. Burning Regulations" and by adding footnote 1 to the end of the table to read as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * * * *				
Article 4. Burning Regulations				
Rule 1. Open Burning ¹				
4-1-0.5	Definitions	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-1	Scope	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-2	Prohibition against open burning	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-3	Exemptions	10/28/2011	[insert date of publication in the	

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
			Federal Register], [insert Federal Register citation]	
4-1-4	Emergency burning	10/28/2011	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-4.1	Open burning approval; criteria and conditions	12/15/2002	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-4.2	Open burning; approval revocation	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
4-1-4.3	Open burning approval; delegation of authority	02/10/2001	[insert date of publication in the Federal Register], [insert Federal Register citation]	
Rule 2. Incinerators				
4-2-1	Applicability	12/15/2002	11/30/2004, 69 FR 69531	
4-2-2	Incinerators	12/15/2002	11/30/2004, 69 FR 69531	
4-2-3	Portable incinerators (Repealed)	12/15/2002	11/30/2004, 69 FR 69531	
* * * * *				

¹ EPA is approving Rule 1 for the counties of Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Crawford, Daviess, Dearborn, Decatur, DeKalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Madison, Marion, Marshall, Martin, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Pulaski, Putnam, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Vermillion, Vigo, Wabash, Warren, Warrick, Washington, Wayne, Wells, White, and Whitley.

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[FR Doc. 2014-22049 Filed 09/16/2014 at 8:45 am;

Publication Date: 09/17/2014]